

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

BILLY EUGENE BROWN,

Plaintiff,

v.

SHERIFF DONNIE HARALSON,

Defendant.

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1:04-CV-32 (WLS)

ORDER

Before the Court is a Recommendation from United States Magistrate Judge Richard L. Hodge (Tab 20), filed July 26, 2005. It is recommended that Defendant's motion for summary judgment be granted. Plaintiff has filed a timely written objection to the Recommendation. (Tab 23).

In his Recommendation, the Magistrate Judge found there was no evidence upon which to find that Plaintiff exhausted his administrative remedies as required by law. Harper v. Jenkin, 179 F.3d 1311 (11th Cir. 1999). The Magistrate Judge pointed out that Defendant submitted three affidavits in support of its position that Plaintiff filed no written grievances complaining of exposure to toxic fumes. The Magistrate Judge noted that Plaintiff provided his own unsworn testimony in rebuttal. Now, after the fact, Plaintiff has attached to his objection a sworn affidavit stating he filed three grievances. Further, Plaintiff has failed to show, that once he became aware of Defendant's defense, that he made any effort to file an out-of-time grievance. The Court notes that while Plaintiff complains of his lack of legal knowledge, the Magistrate Judge specifically provided Plaintiff with notice that a summary judgment motion had been filed and of the necessity of filing a written response. (Tab 17). Further, a review of the actual notice discloses mention at least five times of the necessity of filing "sworn statements" or affidavits to rebut the factual assertions made by the movant. Plaintiff cannot now in good faith complain that he had a lack of knowledge of the necessity of filing a sworn statement or affidavit to rebut the evidence

submitted by the Defendant. As Plaintiff produced no admissible evidence to the Magistrate Judge during the pendency of the motion for summary judgment to rebut Defendant's evidence or has made any showing that there existed a legal impediment preventing him from producing such evidence, Plaintiff's objection is overruled.

Upon full review and consideration of the record, the Court finds that said Recommendation (Tab 20) should be, and hereby is, **ACCEPTED, ADOPTED** and made the order of this Court for reason of the findings made and reasons stated therein, together with the findings made and conclusions reached herein. Accordingly, Defendants' motions for summary judgment (Tab 16) is **GRANTED**.

SO ORDERED, this 16th day of September, 2005.

/s/W. Louis Sands
W. Louis Sands, Chief Judge
United States District Court